

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

THOMAS RAY RODRIGUEZ,

Plaintiff,

v.

No. 2:24-cv-0713-DLM

DEBORAH OCHOA,

Defendant.

**MEMORANDUM OPINION AND ORDER  
GRANTING APPLICATION TO PROCEED *IN FORMA PAUPERIS* AND  
ORDER TO SHOW CAUSE**

**THIS MATTER** comes before the Court on *pro se* Plaintiff's Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 (Doc. 1), and Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. 3).

**I. Application to Proceed *in forma pauperis***

The statute for proceedings *in forma pauperis*, 28 U.S.C. § 1915(a), provides that the Court may authorize the commencement of any suit without prepayment of fees by a person who submits an affidavit that includes a statement of all assets the person possesses and that the person is unable to pay such fees.

When a district court receives an application for leave to proceed in forma pauperis, it should examine the papers and determine if the requirements of [28 U.S.C.] § 1915(a) are satisfied. If they are, leave should be granted. Thereafter, if the court finds that the allegations of poverty are untrue or that the action is frivolous or malicious, it may dismiss the case[.]

*Menefee v. Werholtz*, 368 F. App'x 879, 884 (10th Cir. 2010) (citing *Ragan v. Cox*, 305 F.2d 58, 60 (10th Cir. 1962)). "The statute [allowing a litigant to proceed in forma pauperis] was intended for the benefit of those too poor to pay or give security for costs...." *Adkins v. E.I. DuPont de Nemours*

& Co., 335 U.S. 331, 344 (1948). While a litigant need not be “absolutely destitute,” “an affidavit is sufficient which states that one cannot because of his poverty pay or give security for the costs and still be able to provide himself and dependents with the necessities of life.” *Id.* at 339.

The Court grants Plaintiff’s Application to Proceed in District Court Without Prepaying Fees or Costs. Plaintiff signed an affidavit stating he is unable to pay the costs of these proceedings and provided the following information: (i) Plaintiff’s average monthly income amount during the past 12 months is \$920.00; (ii) Plaintiff’s monthly expenses total \$1,050.00; (iii) Plaintiff has no cash and no funds in bank accounts; and (iv) Plaintiff’s four minor children rely on Plaintiff for support. The Court finds that Plaintiff is unable to pay the costs of this proceeding because he signed an affidavit stating he is unable to pay the costs of this proceeding, because his monthly expenses exceed his low monthly income, and because his four minor children rely on him for support.

## **II. Order to Show Cause**

Plaintiff alleges:

[Defendant] takes our two boys to visit grandma. Sheriff dupity calls me cum pick up your boys moms going to jail for battery on a houshold membr, [Defendant] Ochoa pleads guilty, sentencing day cums [Defendant] gets kids and disapperis District court judge grants me x parte sole custody of my boys, judge put on sole cudtody, the boys are from the State of New Mexico, mother disaparred to Texas crossed state lines, a federal offence, law enforcement tells me its a federal matter.

(Doc. 1 at 2. [sic]) Plaintiff asserts claims pursuant to 42 U.S.C. § 1983 and for negligence, parental interference, kidnapping and a “federal crime.” (*Id.* at 2–3.)

The Complaint fails to state a claim pursuant to 42 U.S.C. § 1983 against Defendant. "The two elements of a Section 1983 claim are (1) deprivation of a federally protected right by (2) an actor acting under color of state law." *Schaffer v. Salt Lake City Corp.*, 814 F.3d 1151, 1155 (10th Cir. 2016). There are no allegations that Defendant was acting under color of state law.

The Complaint fails to state claims for kidnapping and a “federal crime.” “[C]riminal statutes do not provide for private civil causes of action.” *Kelly v. Rockefeller*, 69 F. App’x 414, 415–16 (10th Cir. 2003); *see also Diamond v. Charles*, 476 U.S. 54, 64 (1986) (“a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another”).

The Court orders Plaintiff to show cause why the Court should not dismiss Plaintiff’s claims for the reasons stated above. If Plaintiff asserts the Court should not dismiss the claims, Plaintiff must file an amended complaint. The amended complaint must comply with the Federal and Local Rules of Civil Procedure.

### **III. Service on Defendant**

Plaintiff is proceeding in forma pauperis pursuant to 28 U.S.C. § 1915. Section 1915 provides that the “officers of the court shall issue and serve all process, and perform all duties in [proceedings *in forma pauperis*]”). 28 U.S.C. § 1915(d). The Court will not order service at this time because the Complaint fails to state a claim upon which relief may be granted. The Court will order service if: (i) Plaintiff files an amended complaint that states a claim over which the Court has subject-matter jurisdiction; and (ii) files a motion for service which includes the address of each Defendant.

### **IV. Case Management**

Generally, *pro se* litigants are held to the same standards of professional responsibility as trained attorneys. It is a *pro se* litigant’s responsibility to become familiar with and to comply with the *Federal Rules of Civil Procedure* and the *Local Rules of the United States District Court for the District of New Mexico* (the “Local Rules”).

Guide for Pro Se Litigants at 4, United States District Court, District of New Mexico (October 2022). The Local Rules, the Guide for Pro Se Litigants and a link to the Federal Rules of Civil Procedure are available on the Court’s website: <http://www.nmd.uscourts.gov>.

## V. Compliance with Rule 11

The Court reminds Plaintiff of his obligations pursuant to Rule 11 of the Federal Rules of Civil Procedure. *See Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008) (“*Pro se* status does not excuse the obligation of any litigant to comply with the fundamental requirements of the Federal Rules of Civil and Appellate Procedure.”). Rule 11(b) provides:

**Representations to the Court.** By presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

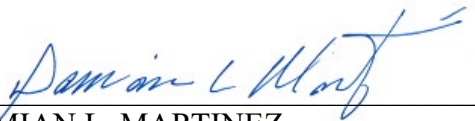
- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
- (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

Fed. R. Civ. P. 11(b). Failure to comply with the requirements of Rule 11 may subject Plaintiff to sanctions, including monetary penalties and nonmonetary directives. *See* Fed. R. Civ. P. 11(c).

**IT IS ORDERED** that:

- (i) Plaintiff’s Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. 3) is **GRANTED**.
- (ii) Plaintiff shall, within 21 days of entry of this Order: (a) show cause why the Court should not dismiss Plaintiff’s claims; and (b) file an amended complaint. Failure to

timely show cause and file an amended complaint may result in dismissal of this case.

  
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DAMIAN L. MARTINEZ  
UNITED STATES MAGISTRATE JUDGE